FILED
NOV 5 1971
E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-396

LUIS MARTI,

Petitioner,

—v.—

UNITED STATES OF AMERICA

SUPPLEMENTAL MEMORANDUM AND REPLY BRIEF FOR PETITIONER

PATRICK M. WALL
36 West 44th Street
New York, N. Y. 10036
(212) 986-6688
Counsel for Petitioner

IN THE

Supreme Court of the United States

October Term, 1971

LUIS MARTI,

Petitioner,

—v.—

UNITED STATES OF AMERICA

SUPPLEMENTAL MEMORANDUM AND REPLY BRIEF FOR PETITIONER

I. Supplemental Memorandum

Our purpose in submitting this Supplemental Memorandum is to call to the attention of the Court that Petitioner has raised, both in the trial court and in the Court of Appeals for the Second Circuit, a question as to the constitutionality, under the First Amendment, of 18 U.S.C. §1465 —an issue similar to one upon which this Court recently granted certiorari in *United States* v. *Onito* (No. 70-69), U.S. (October 13, 1971) (concerning the constitutionality of 18 U.S.C. §1462).

II. Reply Brief

In its Memorandum in Opposition with respect to Petitioner's argument concerning the trial court's exclusion of defense evidence offered on the issue of contemporary community standards, the Government incorporated arguments from its Memorandum in Opposition to the petition for certiorari in *Miller* v. *United States,* No. 70-43.

Normally, we would leave the issues, as already framed, alone. But we cannot resist the temptation to note that, in *Miller,* the Government defended vigorously the trial court's rejection of a defense offer of "expert witnesses to testify that other material was comparable to that before the court and that the comparative material did not go beyond customary limits of candor." Here, of course, the Government is vigorously defending a claim in the court below that such proof had to be put in by means of expert testimony. We submit that it is confusing to have certain courts reject expert testimony on that subject at the same time that other courts are requiring it.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

PATRICK M. WALL
36 West 44th Street
New York, N. Y. 10036
(212) 986-6688
Counsel for Petitioner